Majlis Daerah Hulu Terengganu v Tenaga Nasional Bhd and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 01(f)-44–12 OF 2019(T) AND 01(f)-19–08 OF 2020(T)
ZAWAWI SALLEH, NALLINI PATHMANATHAN AND VERNON ONG FCJJ
9 DECEMBER 2020

Statutory Interpretation — Construction of statutes — Contextual approach — Dam, diversion water tunnel, tunnel liners and pipelines, spillway and closure of dam outlet ('the five elements') comprising part of hydroelectric power ('HEP') station were separately taken into account by local authority in computing annual value of holding occupied by the HEP station for purpose of fixing assessment rate — Whether local authority erred in not considering the five elements collectively as a single unit of 'machinery used in the making of any article' in s 2(b) of Local Government Act 1976 ('the LGA') — Whether local authority gave 'machinery' its ordinary conventional meaning without appreciating context in which it was used — Whether contextual approach required application of 'Functional Test' which showed the five elements (whether moveable or immoveable) were a single inseparable unit of machinery required by the HEP station to make electricity — Whether enhanced value that the five elements gave to the holding occupied by the HEP station should not have been taken into account under s 2(b) of the LGA in estimating the annual value of the holding

The instant appeals had their origin in a High Court originating motion ('OM') filed against the appellant by the respondent ('TNB') — which owned and operated a hydroelectric power ('HEP') station and dam at Tasik Kenyir in Terengganu — disputing the manner in which the appellant had determined the annual value of the holding occupied by the HEP station and dam ('the property') to fix the assessment rate payable by TNB. In October 2017, the appellant had notified TNB that the property had been valued at RM33.35m and therefore the yearly assessment payable from 2005 was RM2,668,000. TNB disputed the said figures and sent the appellant a valuation report assessing the property value at only RM1.75m but the appellant rejected the same. TNB then filed the OM to set aside the appellant's valuation and assessment rate on the ground that it had employed a wrong method of determining the same. TNB contended that the appellant had taken into consideration the enhanced value of the property by the presence of the dam, diversion water tunnel, tunnel liners and pipelines, spillway and closure of dam outlet ('the five elements') of the HEP station instead of regarding the five elements collectively as a single item of 'machinery' used in the production of electricity and thereby excluding them from the rating valuation under s 2(b) of

A the Local Government Act 1976 ('the LGA'). TNB tendered to the court a valuation report which assessed the annual value of the property at only RM2.61m after excluding the five elements from consideration on the basis that they collectively comprised machinery used in the making of electricity. The High Court agreed and held that the five elements fell within the B definition of 'machinery used in the making of any article' in s 2(b) of the LGA. The court held that 'machinery' had to be interpreted liberally to include all the five elements as forming a single and inseparable unit for the production of electricity despite the fact they were physically separate and whether or not they were moveable or had become part of the land on which the HEP station stood. C The court, inter alia, set aside the appellant's valuation and assessment rate, fixed the annual value of the property at RM2.61m, determined the assessment rate payable from 2005 to be RM208,800 and ordered the appellant to refund the surplus assessment that TNB had paid. Aggrieved by the decision, the appellant filed the instant appeals pursuant to s 145 of the LGA. The questions D of law in the appeals were: (a) whether for the purpose of estimating the annual value of the property the words 'any machinery used for the making of any article' appearing in s 2(b) of the LGA included the five elements; and (b) whether the five elements should be construed as a 'single unit of machinery for the production of an article' (in this case, electricity). In its submissions, the E appellant relied upon the Federal Court's decision in *Majlis Perbadanan Seberang Perai v Tenaga Nasional Berhad* [2005] 1 MLJ 1 ('Majlis Seberang Perai') to contend that: (i) all the five elements came within the definition of 'land' and/or 'building' because they were either attached to or integrated permanently with the land and/or building and could not be dismantled and F removed; hence, all the five elements were excluded from the definition of 'machinery' and therefore were not exempted from assessment of the annual value of the property; and (ii) only steam engines, boilers or other motive power belonging to the generator, as well as the generator itself, were 'article production machinery' excluded from assessment of the annual value of the G property since they were mechanical devices or contrivances not attached to or integrated with the land. TNB, on the other hand, contended that although the five elements were physically separate, and whether or not they were moveable or immoveable, by applying the 'Functional Test' they constituted a single unit of machinery essential for the production of electricity by the HEP station and, H hence, were 'article production machinery' exempt from assessment of the annual value of the property under s 2(b) of the LGA. TNB argued that just because s 2(b) stated that 'machinery' includes steam engines, boilers or other motive power belonging to such machinery, that did not exhaustively define 'machinery' but, instead, extended the meaning of the word. TNB argued that I 'machinery' should not be given just an ordinary, dictionary meaning but a meaning appropriate to the context in which it appeared.

Held, unanimously answering the leave questions in the affirmative, dismissing the appeals and ordering the appellant to refund to TNB the excess

rate of RM34,470,200 that it had paid: A

(1) The High Court was correct in applying the 'functional test' to construe the word 'machinery' in s 2(b) of the LGA. The test looked at the function of the item in dispute and asked whether it had a functional purpose that enabled the business to perform (see paras 49, 54 & 78). B

(2) The application of the 'functional test' led to the conclusion that all the five elements, whether moveable or immoveable, should be regarded as a single unit in the production of electricity by the HEP station and could not be treated on a piecemeal basis for assessment of the annual value of the holding. The functions and roles of each of the five elements were crucial and interconnected and none of them could function without the other. Thus, all the five elements as a single unit of machinery for the production of electricity or 'article production machinery' under s 2(b) of the LGA were exempt from consideration in the computation of the annual value of the property (see paras 57 & 68). C D

(3) The court could not adopt the ordinary or dictionary meaning of the word 'machinery' which envisaged 'devices or contrivances that possess mechanical functions'. Dictionary meaning could help in interpreting the meaning of statutory language. But, if a statute dealt with a technical or specialised subject (eg hydroelectricity, telecommunications, tax, etc), the words in the statute might have meanings that differed from their ordinary usage. Hence, in the instant case, the contextual approach called for an analysis from a functional standpoint of the apparatus, plant or machinery used in the 'making of the article', which in this case was electricity. 'Machinery' in s 2(b) of the LGA was stated to include 'steam engines, boilers or other motive power belonging to such machinery'. But this was not an exhaustive definition of 'machinery' but an inclusive definition. The words were used to enlarge the meaning of 'machinery' to include other meanings not confined to the ordinary or natural or popular meaning of that term. Hence, for the purposes of the instant case, 'machinery' would mean 'any machinery used in the making of electricity' and 'any machinery' would mean machinery whether in the conventional sense or not (see paras 46–48, 60–61 & 64). E F G H

(4) Majlis Perbandaran Seberang Perai was not authority for the proposition that machinery which was 'building' under s 2 of the LGA was not 'article production machinery' under s 2(b) of the LGA. The Federal Court did not decide that case on the reasoning that machinery that was integrated with 'land' and/or 'building' and which directly produced an article could not be considered as 'article production machinery' for exemption from computation of the annual value of the holding (see paras 74 & 76). I

[Bahasa Malaysia summary

Rayuan semasa bermula dari Saman Pemula di Mahkamah Tinggi ('OM') yang difailkan terhadap perayu oleh responden ('TNB') — yang mempunyai dan mengendalikan stesen dan empangan janakuasa hidroelektrik ('HEP') di Tasik Kenyir di Terengganu — mempertikaikan cara di mana perayu telah menentukan nilai tahunan pegangan yang diduduki oleh stesen dan empangan HEP ('hartanah tersebut') untuk menetapkan kadar taksiran yang harus dibayar oleh TNB. Pada bulan Oktober 2017, perayu telah memaklumkan kepada TNB bahawa hartanah tersebut telah dinilai sebanyak RM33.35 juta dan oleh itu nilai tahunan yang perlu dibayar dari tahun 2005 adalah RM2,668,000. TNB mempertikaikan jumlah tersebut dan menyerahkan kepada perayu laporan penilaian yang menafsirkan nilai hartanah tersebut hanya berjumlah RM1.75 juta tetapi ditolak oleh perayu. TNB kemudian memfailkan OM untuk mengetepikan penilaian dan kadar taksiran perayu dengan alasan bahawa ia mengguna pakai kaedah yang salah dalam menentukannya. TNB berpendapat bahawa perayu telah mempertimbangkan peningkatan nilai hartanah dengan adanya *dam, diversion water tunnel, tunnel liners* dan *piplines, spillway* dan *closure of dam outlet* ('the lima element tersebut') stesen HEP dan sebaliknya membuat anggapan bahawa lima elemen tersebut secara kolektif sebagai satu item iaitu 'jentera' yang digunakan dalam pengeluaran elektrik dan dengan itu mengecualikannya dari penilaian penarafan di bawah s 2(b) Akta Kerajaan Tempatan 1976 ('AKT'). TNB mengemukakan kepada mahkamah laporan penilaian yang menafsirkan nilai tahunan hartanah hanya pada jumlah RM2.61 juta setelah tidak mengambilkira lima elemen tersebut sebagai pertimbangan atas dasar bahawa ianya secara kolektif terdiri daripada jentera yang digunakan dalam penghasilan elektrik. Mahkamah Tinggi bersetuju dan berpendapat bahawa lima elemen tersebut termasuk dalam definisi 'jentera yang digunakan dalam penghasilan apa-apa benda' dalam s 2(b) AKT. Mahkamah berpendapat bahawa 'jentera' harus ditafsirkan secara bebas untuk mengambilkira kelima-lima elemen tersebut sebagai membentuk satu unit yang tidak dapat dipisahkan untuk pengeluaran elektrik walaupun secara fizikalnya terpisah dan sama ada ianya boleh dialihkan atau tidak atau menjadi sebahagian daripada tanah di mana stesen HEP dibina. Mahkamah, antara lain, mengetepikan kadar penilaian dan taksiran perayu, menetapkan nilai tahunan hartanah pada RM2.61 juta, menetapkan kadar taksiran yang perlu dibayar dari tahun 2005 menjadi RM208,800 dan memerintahkan perayu untuk mengembalikan taksiran lebihan yang telah dibayar TNB. Terkilan dengan keputusan tersebut, perayu memfailkan rayuan semasa berdasarkan s 145 AKT. Persoalan undang-undang dalam rayuan tersebut adalah: (a) sama ada untuk tujuan menganggarkan nilai tahunan hartanah dengan ayat 'jentera mana-mana yang digunakan untuk membuat apa-apa benda' yang terdapat dalam s 2(b) AKT adalah termasuk lima elemen tersebut; dan (b) sama ada lima elemen tersebut harus ditafsirkan sebagai 'satu unit jentera untuk pengeluaran sesuatu benda'

(dalam kes ini, elektrik). Dalam penghujahannya, perayu bergantung kepada keputusan *Majlis Perbadanan Seberang Perai v Tenaga Nasional Berhad* [2005] 1 MLJ 1 ('Majlis Seberang Perai') untuk menghujahkan bahawa: (i) kelima-lima elemen tersebut termasuk dalam definisi 'tanah' dan/atau' bangunan' kerana ianya dibina atau dididiran secara kekal dengan tanah dan/atau bangunan dan tidak dapat dirobohkan dan dialihkan; oleh itu, kelima-lima elemen tersebut tidak termasuk dalam definisi 'jentera' dan oleh itu tidak dikecualikan dari taksiran nilai tahunan hartanah; dan (ii) hanya 'enjin stim, dandang atau lain-lain kuasa gerak yang berkaitan dengan jentera itu, atau sebagai penjana itu sendiri, adalah 'jentera pengeluaran sesuatu benda' tidak termasuk dalam penaksiran nilai tahunan hartanah kerana ia adalah alat mekanikal atau alat yang tidak dibina atau didirikan pada tanah. TNB, sebaliknya, berpendapat bahawa walaupun lima elemen tersebut secara fizikalnya terpisah, dan sama ada boleh dialihkan atau tidak boleh dialihkan, dengan mengguna pakai 'functional test', ianya membentuk satu unit jentera yang penting untuk pengeluaran elektrik oleh HEP stesen dan, oleh itu, 'jentera pengeluaran sesuatu benda' yang dikecualikan daripada penaksiran nilai tahunan hartanah di bawah s 2(b) AKT. TNB berpendapat bahawa hanya kerana s 2(b) menyatakan bahawa 'jentera' merangkumi 'enjin stim, dandang atau lain-lain kuasa gerak yang berkaitan dengan jentera itu, yang tidak secara menyeluruh mendefinisikan 'jentera' tetapi, sebaliknya, memperluaskan makna perkataan tersebut. TNB berpendapat bahawa 'jentera' tidak boleh diberikan makna biasa kamus, tetapi makna yang sesuai dengan konteks di mana ianya muncul.

Diputuskan, dengan sebulat suara menjawab persoalan kebenaran merayu secara afirmatif, menolak rayuan dan memerintahkan perayu untuk mengembalikan kepada TNB kadar lebihan RM34,470,200 yang telah dibayarnya:

(1) Mahkamah Tinggi telah dengan tepat dalam menerapkan 'functional test' untuk menafsirkan ayat 'jentera' dalam s 2(b) AKT. Ujian tersebut melihat fungsi alat yang dipertikaikan dan menyoal sama ada ianya mempunyai tujuan berfungsi yang membolehkan perniagaan dijalankan (lihat perenggan 49, 54 & 78).

(2) Penggunaan 'functional test' membawa kepada kesimpulan bahawa kesemua lima elemen tersebut, sama ada boleh dialihkan atau tidak boleh dialihkan, haruslah dianggap sebagai satu unit dalam penghasilan elektrik oleh stesen HEP dan tidak dapat dianggap secara asas satu persatu untuk penaksiran nilai tahunan pegangan. Fungsi dan peranan setiap lima elemen tersebut adalah penting dan saling berkaitan dan ianya tidak dapat berfungsi tanpa yang lain. Oleh itu, kelima-lima elemen tersebut sebagai satu unit jentera untuk pengeluaran elektrik atau 'jentera pengeluaran sesuatu benda' di bawah s 2(b) AKT dikecualikan daripada

diambilkira dalam pengiraan nilai tahunan hartanah (lihat perenggan 57 & 68).

(3) Mahkamah tidak dapat mengguna pakai makna biasa atau kamus untuk ayat 'jentera' yang bermaksud 'alat atau item yang memiliki fungsi mekanik'. Makna kamus dapat membantu dalam menafsirkan makna bahasa perundangan. Tetapi, sekiranya undang-undang berkaitan dengan subjek teknikal atau khusus (eg hidroelektrik, telekomunikasi, cukai, dan lain-lain), kata-kata dalam undang-undang tersebut mungkin mempunyai makna yang berbeza dari penggunaan biasa. Oleh itu, dalam kes semasa, pendekatan perkataan memerlukan analisis dari sudut fungsi peralatan, loji atau jentera yang digunakan dalam 'pembuatan sesuatu benda', yang mana dalam hal ini adalah elektrik. 'Jentera' dalam s 2(b) AKT adalah termasuk 'enjin stim, dandang atau lain-lain kuasa gerak yang berkaitan dengan jentera itu'. Tetapi ini bukan definisi lengkap mengenai 'jentera' tetapi definisi inklusif. Kata-kata tersebut digunakan untuk memperluaskan makna 'jentera' untuk memasukkan makna lain yang tidak terbatas pada makna biasa atau semula jadi atau makna popular istilah tersebut. Oleh itu, untuk tujuan kes semasa, 'jentera' bermaksud 'mana-mana jentera yang digunakan dalam pembuatan elektrik' dan 'mana-mana jentera' bermaksud mesin sama ada dalam pengertian konvensional atau tidak (lihat perenggan 46–48, 60–61 & 64).

(4) Majlis Perbandaran Seberang Perai bukanlah nas undang-undang untuk mengemukakan bahawa jentera yang mana adalah 'bangunan' di bawah s 2 AKT adalah bukan 'jentera pengeluaran sesuatu bendan' di bawah s 2(b) AKT. Mahkamah Persekutuan tidak memutuskan kes tersebut dengan alasan bahawa mesin yang didirikan dengan 'tanah' dan/atau 'bangunan' dan yang secara langsung menghasilkan sesuatu benda tidak boleh dianggap sebagai 'jentera pengeluaran sesuatu benda' untuk pengecualian dari pengiraan nilai tahunan pegangan (lihat perenggan 74 & 76)]

Cases referred to

Benson (Inspector of Taxes) v Yard Club Ltd [1979] 53 TC 67, CA (refd)
Cabell v Markham [1945] 148 F 2nd 737 (refd)
Corporation of Calcutta v Chairman Cossipore and Chitapore Municipality ILR 49 Cal 190; A1R 1922 PC 27, PC (refd)
Dixon (Inspector of Taxes) v Fitch's Garage [1979] STC 266, CA (refd)
Dy Chief Controller of Imports and Exports New Delhi v KT Kosalram and others [1970] (3) SCC 82, SC (refd)
Grey County v Grey Electric-Power Board [1936] 1 NZLR 247, CA (refd)
IRC v Barclay Curle & Co Ltd [1969] 1 WLR 675, HL (refd)
IRC v Scottish and Newcastle Breweries Ltd [1982] 1 WLR 322, HL (refd)

Jarrold (Inspector of Taxes) v John Good & Sons Ltd [1963] 1 WLR 214, CA (refd)
Lembaga Pembangunan Industri Pembinaan Malaysia v Konsortium JGC Corp & Ors [2015] 6 MLJ 612; [2015] 9 CLJ 273, FC (refd)
Majlis Perbadanan Seberang Perai v Tenaga Nasional Berhad [2005] 1 MLJ 1; [2004] 4 CLJ 389, FC (distd)
Tenaga Nasional Bhd v Majlis Daerah Tapah [2017] MLJU 607; [2018] 8 CLJ 464, HC (refd)
Yarmouth v France (1887) LR 19 QBD 647, QBD (refd)

Legislation referred to

Courts of Judicature Act 1964 s 96(a)
Income Tax Act 1952 [UK] ss 279(1), 280
Local Government Act 1976 ss 2, 2(b), (b)(i), 144(3), 145, 145(1)

Zainur Zakaria (Nor Azlan Sharin with him) (Hanif Abdul Rahman & Assoc) for the appellant.
Cyrus Das (David Mathew with him) (Steven Thiru & Sudhar Partnership) for the respondent.

Zawawi Salleh FCJ (delivering judgment of the court):

INTRODUCTION

[1] These appeals concern the proper construction of the definition of 'machinery' in the proviso (b) to the definition of 'annual value' under s 2 of the Local Government Act 1976 ('the LGA'). The proviso exempts 'machinery' for the 'making of an article' located in a holding from being rated. Under the scheme of the LGA, rates are payable based on the annual value of a holding.

[2] The dispute has arisen because the appellant, Majlis Daerah Hulu Terengganu, which is the rating authority in the district where the respondent's hydroelectric power station in Kenyir Dam is located, took into account the building as well as the Dam, Diversion Water Tunnel, Tunnel Liners And Pipelines, Spillway And Closure Of Dam Outlet ('the five elements') in coming to their assessment that the annual value of the property was RM33.35m.

[3] The High Court held that the five elements in the hydroelectronic power station form a single unit of 'machinery' required for the process of operating the electricity and each element is interconnected to each other despite the fact that they are physically separated in the sense that the role and functions of each elements are important and cannot be separated. According to the High Court, to hold otherwise would make the hydro-electronic power station non-functioning.

A **[4]** Aggrieved by the decision and order of the High Court, the appellant appealed to the Federal Court pursuant to s 145 of the LGA.

PROCEDURAL HISTORY

B **[5]** Before this court, there are two appeals by the appellant and a cross appeal by the respondent. These appeals emanated from the same action by the appellant in the High Court at Kuala Terengganu vide Originating Motion No TA-25–1–01 of 2018. Initially, the appeal was filed in Civil Appeal No 01(f)-44–12 of 2019(T) by way of leave application which was C subsequently granted by this court.

[6] However, at the hearing of these appeals on 29 July 2020, the respondent raised a preliminary objection on the ground that the appeal was lodged D pursuant to s 145 of the LGA and therefore this court would not have had jurisdiction to have granted leave to the appellant to appeal or to admit the proposed two leave questions for the purpose of the appeal under s 96(a) of the Courts of Judicature Act 1964 ('the CJA'). On the same day, upon hearing submissions from both parties, this court ruled that the appellant should be E allowed to regularise the procedure by filing new notice of appeal and memorandum of appeal under the Civil Appeal No 01(f)-19–08 of 2020(T).

[7] As regards the respondent's cross appeal, the issue in dispute is related to the acceptance by the learned High Court judge of the respondent's valuation F report of the property and the rejection of the appellant's valuation report of the same.

[8] The questions of law framed by learned counsel for the appellant for our determination are as follows: G

(a) whether the words 'any machinery used for the making of any article' appearing in ss 2(b) and (b)(i) of the Local Government Act 1976 (Act 171) in relation to a hydroelectric power station, can be defined as including all the structures or elements such as: (i) the dam; (ii) H 'Spillway'; (iii) 'Diversion Tunnel'; (iv) 'Tunnel Liners and Pipelines'; and (v) 'Closure of Dam Outlet', for the purpose of the estimation of the annual value; and

(b) whether all the elements or components of a hydroelectric power station including the: (i) dam; (ii) 'Spillway'; (iii) 'Diversion Tunnel'; (iv) I 'Tunnel Liners and Pipelines'; and (v) 'Closure of Dam Outlet' can be defined as a 'single unit of machinery for the production of an article' (in our case, electricity) pursuant to ss 2(b) and (b)(i).

THE SALIENT FACTS

[9] The respondent is the owner and operator of the Sultan Mahmud Hydroelectric Station, Tasik Kenyir, 21700 Kuala Berang, Terengganu which is located on Lot No PT 5068, Mukim Jenagor, Daerah Hulu Terengganu ('the property'). On the other hand, the appellant is a local authority established under the provisions of the LGA.

[10] The property is alienated to the respondent and designated as a hydroelectric power station, comprising of the following:

(a) the main components which make up the hydroelectric power plant, namely, the dam, diversion tunnel, tunnel liners and pipelines, spillway and closure of dam outlet ('the five elements'); and

(b) buildings that serve the operations of the hydroelectric power station, namely, a six-storey building which accommodates the equipment plant for the power station ('the six-storey hydroelectric power station'), sub-station buildings, a two-storey office building, canteen, public relations building, main guardhouse, mechanical store, petrol and diesel stores, gate control house, post intake, scrap yard store, open shed, parking bays, a walkway between the two-storey office building and canteen and an Emergency Control Centre Building ('the buildings').

[11] By a notice of amendment to the valuation list dated 22 May 1999, the appellant sought to value the property at RM63.6m being its purported annual value and imposed a yearly assessment rate of 8% at RM5,088,000.

[12] The respondent objected to the said amendment, and the appellant subsequently revised the annual value of the property to RM62.4m and a yearly assessment rate payable at RM4,992,000.

[13] Being dissatisfied with the appellant's decision, the respondent appealed to the High Court pursuant to s 145 of the LGA via Originating Motion No 25–08 of 1999 ('Suit 1'). However, the appellant and respondent reached a settlement of the matter and recorded a consent judgment on 9 April 2000 ('the consent judgment') before Suit 1 was heard. Pursuant to the consent judgment, the respondent was required to pay the appellant RM2m pa for a period of five years, ending on 30 June 2004.

[14] In 2006, the respondent filed a judicial review due to the alleged unilateral conduct of the appellant in imposing new assessment rates in respect of the property. The Federal Court, vide case No 01(f)-5–03 of 2012(T) ('Suit 2'), ruled in favour of the respondent and ordered that the respondent to pay the appellant the assessment rates under the consent judgment until it is

superseded by a new valuation list ('the FC order'). By way of a Maybank cheque dated 22 March 2016, the respondent paid the sum of RM21,089,200 to the appellant for the balance of the RM2m yearly assessment rate under the consent judgment for the period from 2005 to 2015.

[15] On 1 October 2017, the appellant issued a notice of amendment to the valuation list notifying the respondent that:

(a) the annual value of the property is RM33.35m;

(b) the yearly assessment rate payable would be 8% thereof, ie RM2,668,000; and

(c) the said amendment to the valuation list would be effective from 1 January 2005.

[16] Subsequently, the respondent objected to the notice to amend the valuation list by way of a notice of objection dated 3 October 2017 pursuant to s 144(3) of the LGA. Thereafter, the respondent made a payment of RM3,834,400 to the appellant for the RM2m yearly assessment rate under the consent judgment for the period of 2016 and 2017 by way of a Maybank cheque dated 23 October 2017. This results in a total of RM26m being paid to the appellant as the assessment rate for the years from 2005 to 2017 at RM2m pa in accordance to the FC order in Suit 2.

[17] On 30 November 2017, the respondent forwarded to the appellant a valuation report prepared by Nilai Harta Consultant Sdn Bhd dated 23 November 2017, which assessed the annual value of the property at RM1.75m. However, by way of a Notice of Decision dated 31 December 2017, the appellant maintained the position that the annual value of the property was RM33.35m and that the yearly assessment rate payable would be RM2,668,000 from 2005 onwards.

[18] Being dissatisfied by the appellant's decision, the respondent appealed to the High Court under s 145(1) of the LGA by way of originating motion dated 11 January 2018 and prayed, inter alia, for an order that the notice of amendment to the valuation list dated 1 October 2017 and notice of decision dated 31 December 2017 be set aside.

[19] In the meantime, the respondent also produced a further valuation report prepared by MacReal International Sdn Bhd ('the MacReal report') which assessed the annual value of the property at RM2.61m, excluding the five elements on the basis that these were taken to be the main components of the hydroelectric power plant which should therefore be exempted for rating purposes as they are machinery for the production of electricity. On the other

hand, the appellant's valuation report took into account the buildings as well as the five elements in coming to their assessment of the annual value of the property.

[20] As we have alluded to earlier, the learned High Court judge allowed the respondent's application. The principal reason in arriving at conclusion as he did is that the five elements fall within the definition of 'machinery' under s 2(b) of the LGA. Relying on the decision of High Court in *Tenaga Nasional Bhd v Majlis Daerah Tapah* [2017] MLJU 607; [2018] 8 CLJ 464 ('Tapah'), the learned High Court judge held that the word 'machinery' should be interpreted liberally to include all the elements in a hydroelectronic power station which form a single unit of machinery, whereby the roles and functions of such elements are so important that the hydroelectric power station would not be able to function in the absence of any one of the elements.

[21] Consequently, the learned High Court judge made the following orders:

(a) the assessment rates imposed by the appellant in their notice to amend the valuation list dated 1 October 2017 and notice of decision on the objection dated 31 December 2017 in respect of the property known as the Sultan Mahmud Hydroelectric Station, Tasik Kenyir, 21700 Kuala Berang, Terengganu situated at the land described as Lot No PT 5068 Mukim Jenagor, Daerah Hulu Terengganu, Terengganu ('the property') is invalid, null and void and/or illegal;

(b) the annual value of the property is now valued at RM2.61m commencing on the year 2005–2018 and that the yearly assessment rate is to be paid by the respondent to the appellant for the property for the years 2005 to date is RM208,800;

(c) the notice to amend the valuation list and/or the notice of decision is set aside;

(d) the appellant do refund to the respondent the surplus of the assessment rates for the years 2005–2018 within 30 days from the date hereof;

(e) all execution or other proceedings or action based on or related to the said notice to amend the valuation list and the notice of decision is stayed unless ordered to the contrary and that the respondent shall not be required to pay any assessment rates to the appellant in respect of the property otherwise than in accordance with this order; and

(f) costs of RM10,000 to be paid by the appellant to the respondent.

PARTIES' COMPETING SUBMISSIONS

The appellant's submission

[22] First, learned counsel for the appellant referred us to the dictionary meaning of 'machinery' and 'machines'. The *New Shorter Oxford English Dictionary* (Ed 1993), describes 'machine' as 'an apparatus, an appliance, a device for applying mechanical power and having a number of interconnected parts'. 'Machinery' is described as '2' machines or the constituent of a machine taken collectively, the mechanism of a machine or machinery'. Learned counsel posited that the technical definition of 'machinery' and 'machines' envisages 'devices or contrivances that possess mechanical features or parts and perform mechanical functions'. Learned counsel submitted that in order to appreciate the definition of 'machinery used in the production of an article', regards ought to be had to the understanding of the definitions of the terms 'building', 'land', 'article production machinery', 'motive power' and 'direct machinery'.

[23] Secondly, learned counsel for the appellant submitted that the five elements fall within the meaning of 'building', because the dam and the spillway are permanently attached to the land and cannot be dismantled and removed. Whereas the diversion tunnel, tunnel liners and the closure of dam outlet are integrated with the dam and cannot be dismantled and removed for so long as the dam is operational, and therefore they are excluded from the definition of 'machinery'. In support of his submission, learned counsel for the appellant relied heavily on the Federal Court case of *Majlis Perbadanan Seberang Perai v Tenaga Nasional Berhad* [2005] 1 MLJ 1; [2004] 4 CLJ 389 ('Majlis Perbandaran Seberang Perai') where this court held that:

> 20. One would note firstly that *nothing in the proviso (b) to the definition of 'annual value' suggests directly that any machinery could be a 'building'*. Even so, the definition of 'building' lists items that are in the nature of structure, support or foundation that are essentially *immovable* and consistent with the notion of structure, support or foundation that are either provided by a landlord to a tenant, or, even if put up by a tenant, is *generally expected to be left behind* by a tenant upon leaving'. (Emphasis added.)

[24] Thirdly, learned counsel for the appellant submitted that all the five elements fall squarely into the definition of 'land' because all the five elements are either attached to the earth or permanently fastened to anything attached to the earth.

[25] Fourthly, relying on *Majlis Perbandaran Seberang Perai* learned counsel submitted that in the present case the 'article production machinery' is the generator which is the device or contrivance that produces the electricity. And only the steam engines, boilers or other motive power belonging to the

generator as well as the generator itself are excluded from the assessment of the annual value of the property. Therefore, all other machineries are intended to be included in the definitions of 'land' and 'building' where they are attached to such land and building, and are not exempted from the assessment of the annual value of the property.

[26] Fifthly, by applying the *ejusderm generis rule*, the terms 'other motive power belonging to such machinery' referred to in the proviso to s 2 of the LGA ought to be confined to mechanical devices or contrivances of the like nature such as steam engines and boilers. Therefore, the appellant counsel posited that all the five elements do not fall within the definition of such terms.

[27] In conclusion, learned counsel for the appellant submitted that the five elements:

(a) are not 'machines' or 'machinery used in the production of an article', in this case electricity;

(b) are not 'machines' or an 'assembly of machines'; and

(c) cannot constitute the component of a 'single unit of machinery'.

[28] In summary, the points raised by learned counsel for the appellant are this:

> that all the five elements fall within the definition of 'land' and/or 'building' due to their nature that they are either attached to or integrated permanently with the land and/or building and cannot be dismantled and removed, and therefore all the five elements are excluded from the definition of 'machinery', citing *Majlis Perbandaran Seberang Perai* where this Court held that 'machinery' must not be attached to the land or integrated with the land and/or building, and 'machinery' can be dismantled and removed.

Thus, since all the five elements fall within the definitions of 'land' and/or 'building', they are excluded from the definition of 'machinery', and therefore all the five elements are not exempted from assessment of the annual value of the property.

[29] Premised on the aforesaid reasons, learned counsel for the appellant concluded that both the learned judges in the High Court in the present case and in the case of *Tapah* completely overlooked or misunderstood the reasoning and decision in *Majlis Perbandaran Seberang Perai*, and therefore the learned judge's decision in the present case that all the five elements constitute a single unit of machinery in the process of the production of electricity was erroneous and ought to reversed.

The respondent's submission

[30] Learned counsel for the respondent referred us to *Tapah* which followed the approach taken by a New Zealand case of *Grey County v Grey Electric-Power Board* [1936] 1 NZLR 247 which held that the water dam, tunnel and turbines formed part of hydroelectric power and was exempted from rating as 'machinery'. Learned counsel submitted, firstly, that by virtue of the essential functions of the five elements for the production of electricity in the hydroelectric power station, the five elements constitute a single unit of machinery that is necessary for the process of producing electricity. It is one integrated system and no part could be made divisible or functional without the other. Therefore, all the five elements are exempted from assessment for the annual value of the property.

[31] Secondly, learned counsel submitted that the definition of 'machinery' is not an exhaustive definition, on the reason that the word 'includes' is generally used to enlarge words or phrases in a statute. It is a word of extension and not of definition; it indicates an extension of the ordinary meaning which may be attached to the word (see *Lembaga Pembangunan Industri Pembinaan Malaysia v Konsortium JGC Corp & Ors* [2015] 6 MLJ 612; [2015] 9 CLJ 273 (FC)). Therefore, the word 'machinery' ought to be read as 'any machinery' under s 2(b) of the LGA, which would mean machinery whether or not in the conventional sense, citing *Majlis Perbandaran Seberang Perai* which held that '[T]he intention of the legislature in proviso (b) is to apply to all machinery in the production of articles ... that is, to produce electricity ...'.

[32] Thirdly, on the point of the definition of 'machinery', learned counsel submitted that it has no longer any conventional meaning in law, but it is given a contexture meaning as appropriate under the relevant legislation under consideration. It is a chameleon-like word, and gradually diverges from its natural or dictionary meaning as case follows case and one extension leads to another. As such, the contexture approach calls for an analysis from a functional standpoint of the machinery used in the 'making' of the article which in this case is electricity (see *Majlis Perbandaran Seberang Perai*), and the word 'making' is associated with manufacture in the sense of converting something into something else as the final product of the making process.

[33] Fourthly, since the contexture approach calls for an analysis from a functional standpoint of the machinery in the making of electricity, learned counsel went on to argue for the adoption of the 'functional test', which is to regard all the features of the production process, whether moveable or immovable, as an integral whole and not to treat them on a piecemeal basis for assessment. The 'functional test' asks that whether the structure in question fulfils the function of plant in the trader's operations, by considering the nature

and function of such structure. Relying on *Tapah*, learned counsel submitted that the dam's position at an elevated level and the gravitational pressure in the reservoir creates the potential energy in the water collected. Being as a water-basin, it draws its water from the Terengganu river for the specific purpose of establishing a hydroelectric power plant, and it is connected to the national grid for electricity supply and services the whole of Peninsula Malaysia. Whereas the water tunnel serves as a channel to facilitate the flowing of high-pressure water from the dam to the turbine and to increase the kinetic energy of the flowing water through the water tunnel. Water tunnels bring water in and drain the water out from a hydroelectric power station, plying a distinctive role in the process of generating electricity. Therefore, all the five elements fulfil the 'functional test' as without one of these elements, the hydroelectric power station would not be able to function and generate electricity for public use.

[34] Fifthly, learned counsel argued that removability is not a condition for the definition of either 'building' or 'machinery'. The definition of 'any machinery' is wide in scope and not restricted to affixation to the ground. *Majlis Perbandaran Seberang Perai* does not rely on this factor as a legal condition in s 2(b) of the LGA, instead removability was available to distinguish the apparatus in a thermal power station from 'building'. Learned counsel also argued that the dam being an integral part of the hydroelectric power station falls under 'a holding upon which there is machinery', and therefore it would not be subject to rating purposes whether or not the dam is land, on the ground that the exemption contained in s 2(b) of the LGA is overriding and would apply to all holdings whether or not it is 'land'.

[35] Learned counsel's for the respondent summarised his submission thus:

> All the five elements, due to their respectively important functions without which the hydroelectric power station would not function, constitute a single unit of machinery for the production of electricity. And such a single unit of machinery falls under the definition of 'machinery' under section 2(b) of the LGA on the basis that the 'Functional Test' is adopted to interpret the definition of 'machinery' for the production of electricity to include such single unit of machinery comprising of the five elements for the production of electricity. Therefore, all the five elements are exempted for computation of the annual value of the property.

The respondent's supplementary submission — Cross-appeal

[36] The respondent's submission is essentially to defend the acceptance by the learned judge of the respondent's valuation report prepared by Mitra Valuers & Property Consultants Sdn Bhd ('the Mitra report').

[37] Learned counsel for the respondent submitted that the High Court was

correct in preferring the MacReal report as it took the account the correct valuation principles in the present case and had due regard to the nature of the holding which is a hydroelectric dam, which is a specialised property and not an ordinary holding that is bought and sold in the open market.

[38] In reply, learned counsel for the appellant submitted that the Mitra report was based on incorrect legal principles since it included the five elements and consequently the computation of the annual rates by the respondent's values was also erroneous. Further, the learned High Court judge failed to proffer any concrete reasons as to why the appellant's valuation report should not be accepted.

[39] According to learned counsel for the appellant, the issue before this court is whether all the five elements are machines and collectively they constitute a single unit of machinery, and therefore they are exempted from the payment of the annual value of the property.

[40] In the event that this court agrees with the appellant that the five elements are not machines and cannot collectively constitute a single unit of machinery, it would follow that the learned trial judge's acceptance and reliance on the respondent's valuation report is in error as it excluded the five elements, and thus the computation of the annual value of the property was erroneous and based on incorrect legal principles.

ANALYSIS AND DECISION

[41] The central issue before this court is whether all the five elements constitute a single unit of machinery for the production of electricity, if so, they collectively form 'machinery for production of article' ('article production machinery') which in the present case is electricity. If all the five elements fall under the definition of 'machinery' under s 2(b) of the LGA, they are exempted from the assessment of annual value of the property.

[42] Section 2 of the LGA provides as follows:

> 'annual value' means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes —
>
> Provided that —
>
> (a) in estimating the annual value no account shall be taken of any restrictions or control on rent in so far as it limits the rent which may be required by a landlord or recovered from a tenant of a holding;
>
> (b) in estimating the annual value of any holding in or upon which there is *any machinery* used for any or all of the following purposes —

(i) the making of any article or part of an article;

(ii) the altering, repairing, ornamenting or finishing of any article; and

(iii) the adapting for sale of any article

the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration, and *for the purposes of this paragraph 'machinery' includes steam engines, boilers or other motive power belonging to such machinery;*

(c) in the case of any land —

(i) which is partially occupied or partially built upon;

(ii) which is vacant, unoccupied or not built upon;

(iii) with an incomplete building; or

(iv) with a building which has been certified by the local authority to be abandoned or dilapidated or unfit for human habitation,

The annual value shall be, in the case of subparagraph (i), either the annual value as hereinbefore defined or ten per centum of the open market value thereof at the absolute discretion of the Valuation Officer, and in the case of subparagraphs (ii) (iii) and (iv) the annual value shall be ten per centum of the open market value thereof as if, in relation to subparagraphs (iii) and (iv), it were vacant land with no buildings thereon and in all cases the local authority may, with the approval of the State Authority, reduce such percentages to a minimum of give per centum;

(d) where in respect of any particular holding, in the opinion of the Valuation Officer, there is insufficient evidence to base a valuation of annual value upon, the Valuation Officer may apply such methods of valuation as in his opinion appears appropriate to arrive at the annual value; (Emphasis added.)

[43] The word 'machinery' is not defined in the LGA. The Privy Council in *Corporation of Calcutta v Chairman Cossipore and Chitapore Municipality* ILR 49 Cal 190; A1R 1922 PC 27, observed that the word 'machinery' when used in ordinary language prima facie, means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct mutual forces with the object in each case of effecting so definite and specific a result. However, the determination in any given case of what is or is not 'machinery' must to a large extent, depend upon the facts of the particular case.

[44] It is important to note that para (h) of the definition of 'annual value' provides that 'for the purposes of this paragraph 'machinery' includes stream engines, boilers or other motive poser belonging to such 'machinery'.

[45] The Federal Court in *Lembaga Pembangunan Industri Pembinaan Malaysia v Konsortium JGC Corp & Ors* [2015] 6 MLJ 612; [2015] 9 CLJ 273 stated that:

> The word includes is *generally used to enlarge words or phrases in a statute,* as in the current Act, *with those words or phrases together with those they should include, understood to have their natural meaning* (*Dilworth v The Commissioner of Stamps* (1899) AC 99). Edgar Joseph Jr in *Public Prosecutor v Hun Peng Khai & Ors And Other Cases* [1984] 2 CLJ 290; [1984] 2 CLJ Rep 391; [1984] 2 MLJ 318 at p 324 had occasion to remark that the word 'includes' is a word of extension and not of definition. Evans J in *Loke Yung Hong v Ng See See (F) And 3 Others* [1948] 1 MLJ 123; [1948] 1 LNS 29 opined:
>
> > ... one using the word 'include' indicates an extension of the ordinary meaning which may be attached to the word. (Emphasis added.)

[46] The definition of 'machinery' is not an exhaustive definition but an inclusive definition. The words 'steam engines, boilers or other motive power belonging to such machinery' are used to enlarge the word 'machinery' together with the ordinary or natural meaning of 'machinery'. In *Bennion on Statutory Interpretation* (7th Ed) p 576 it was stated that:

> The expressio unius principle is often applied to words of extension. Where it is doubtful whether a stated term does or does not include a certain class, and words of extension are added which cover some only of the members of the class, it is implied that the remaining members of the class are excluded. The most common technique of extending the indisputable meaning of a term is by the use of an enlarging definition, that is one in the form 'A includes B'. Where the stated B does not exhaust the class of which it is a member, the remaining class members are taken to be excluded from the ambit of the enactment.
>
> EXAMPLE
>
> The Immigration Act 1971, s 2(3) stated that for the purposes of s 2(1) of the Act the word 'parent' included the mother of an illegitimate child. The class to which this extension related was the parents of an illegitimate child. Lord Lane CJ said:
>
> > Under the rule expression unius exclusion alterius, that express mention of the mother implies that the father is excluded.

[47] We agree with the submission of learned counsel for the respondent that the significance of the enlargement of the definition in the present case is not what it is enlarged into but what it means without the enlargement. The significance lies in that the enlargement covers 'machinery' in the popular sense of the word, namely, 'steam engines, boilers or other motive power belonging to such machinery'. It suggests in the reverse that the pre-enlargement meaning gives a broader cover to 'machinery' namely that is not confined to the meaning of 'machinery' in the popular sense.

[48] It follows, therefore, without the enlargement the word 'machinery' in s 2(b) would be governed solely by the words 'any machinery used in the making of electricity'. 'Any machinery' would mean machinery whether in the conventional sense or not. The Federal Court in the *Majlis Perbandaran Seberang Perai* observed (at para [30]):

> The intention of the legislature in proviso (b) is to apply to *all machinery* in the production of articles or goods just like the function of SJPJ, that is, to produce electricity for sale to the consumers, large and small.

[49] In our opinion, the approach adopted by the learned High Court judge in construing the word 'machinery' by applying the 'functional test' was correct. In *IRC v Scottish and Newcastle Breweries Ltd* [1982] 1 WLR 322, Lord Wilberforce in the House of Lords said:

> The word 'plant' has frequently been used in fiscal and other legislation. It is one of a fairly large category of words as to which no statutory definition is provided ('trade,' 'office,' even 'income' are others), so that it is left to the court to interpret them. *It naturally happens that as case follows case, and one extension leads to another, the meaning of the word gradually diverges from its natural or dictionary meaning.* This is certainly true of 'plant'. No ordinary man, literate or semi-literate, would think that a horse, a swimming pool, moveable partitions, or even a dry-dock was plant — yet each of these has been held to be so: so why not such equally improbable items as murals, or tapestries, or chandeliers? The courts have, over the years, provided themselves with some guidance in principle, starting with Lindley LJ in *Yarmouth v France* (1887) 19 QBD 647 at p 658. Plant, he said 'in its ordinary sense ... *includes whatever apparatus is used by a business man for carrying on his business* — not his stock-in-trade which he buys or makes for sale; but all goods and chattels, *fixed or moveable*, live or dead, which he keeps for permanent employment in his business. (Emphasis added.)

[50] In *Yarmouth v France* (1887) LR 19 QBD 647 Lindlay LJ said at p 658:

> There is no definition of plant in the Act: but in it ordinary sense, its includes whatever apparatus is used by a business man for carrying on his business, not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business.

[51] In *Jarrold (Inspector of Taxes) v John Good & Sons Ltd* [1963] 1 WLR 214, it was decided that the movable partition screwed to the floor and ceiling of a shipping agent's office were plant within the meaning of ss 279(1) and 280 of the Income Tax Act 1952. The court held that in the circumstances of that case, the partition should be regarded as something more than a mere setting for the carrying out of the trade and that the setting and plant were not mutually exclusive conceptions, for the partitions were used in the carrying out the company's trade or business.

[52] In *IRC v Barclay Curle & Co Ltd* [1969] 1 WLR 675, Lord Reid in his judgment at p 679 had said:

> ... the only reason why a structure should also be plant which has been suggested or which has occurred to me is that it fulfils the function of plant in the trader's operation ...

[53] In *Benson (Inspector of Taxes) v Yard Club Ltd* [1979] 53 TC 67, 'functional test' is also said to be the proper test with regard to the definition of plant. Templeman LJ on p 88 said:

> ... the authorities disclose a distinction between premises in which a business is carried on and the plant with which a business is carried on. There are borderlines case in which a structure forming part of business premises has been held to be plant because it does not merely consist of premises providing accommodation for the business but also performs a function in the actual plant and machinery as an 'imposed loading on a building works', they are not building works, but are loads on building works.

[54] We are alive to the point raised by learned counsel for the appellant that the above cases dealt with 'plant' not 'machinery'. However, on a parity of reasoning, we do not see any difference in 'plant' and 'machinery' for the purpose of adopting the 'functional test'. The test looks at the function of the item in dispute and asks whether it has a functional purpose that enable the business to perform. As noted by Brightman J in *Dixon (Inspector of Taxes) v Fitch's Garage* [1979] STC 266:

> The proper test is whether the canopy had a functional purpose to enable the taxpayer company to perform the activity of supplying petrol to motor vehicles. I ask myself, 'Does the canopy help to supply petrol, or is it merely part of the setting where petrol is supplied?' To use the words of Lord Reid (*Inland Revenue Commissioners v Barclay Curle & Co Ltd* [1969] 1 All ER 732 at p 741), which I have already read, is the canopy part of the means by which the operation of supplying petrol is performed?.

[55] The 'functional test' can be applied to any subject matter as noted by Buckley LJ in *Benson*'s case:

> So, in the case at any rate of a subject-matter which is a building or some other kind of structure, regard must be paid to the way in which it is used to discover whether it can or cannot be properly described as plant. *This is what has been referred to as the functional test. Indeed I think that this test is applicable to every kind of subject-matter.* In some cases the effect of the functional test may be so immediately apparent that the character of the subject-matter as plant goes without saying and the test need not be consciously applied. But in cases nearer the line, in my opinion, the functional test provides the criterion to be applied. *Is the subject-matter the apparatus, or part of the apparatus, employed in carrying on the activities of the business?* If it is, it is no matter that it consists of some structure attached to the soil. If it is not

part of the apparatus so employed, it is not plant, whatever its characteristics may be. A

[56] In *Majlis Perbandaran Seberang Perai*, this court had this to say:

The key issue here is that any machinery used for all or any of the purposes enumerated in items (i), (ii) and (iii) relating to any article (which we say includes electricity), the presence of such machinery which relates to 'article production machinery', the enhanced value of the holding from the presence of such 'article production machinery' *which may include generating plant and machinery* shall not be taken into account in estimating the annual value of the holding of the respondent. (Emphasis added.) B C

[57] Applying the 'functional test', we concluded that all the five elements, whether moveable or immoveable should be regarded as a single unit and should not be treated on a piecemeal basis for assessment rated. All the five elements are essential for the production of electricity. D

[58] We are of the opinion that both in the *Tapah* and the present case, the High Court had properly addressed their minds to the functions of the dam and the water power tunnel as part of whole hydroelectric process in generating electricity. In *Tapah*, Mohd Ruzima J (as he then was) observed at paras (27–28): E

A comprehensive approach taking into account the role and function of each element in a hydroelectric power station is fair, reasonable and accurate for the court to interpret the meaning of 'machinery' under the provisions of such law. F

A 'piecemeal' approach that limits the meaning of 'machinery' only to producers of articles that are not integrated with the land is contrary to the fact of the nature, role and function of the essential elements that make a hydroelectric power station a perfect 'machinery' for the generation of the supply of electricity. G

[59] In the present case, Zainal Azman J likewise adopted the approach of seeing the whole production process as one interrelated entity. His Lordship ruled as follows at (pp 39–40): H

Each element, through physically distinct, are crucial and interrelated with each other. Without one of these elements, the hydroelectric power station would not be able to function and thus generate electricity for public use.

Therefore, in accordance with paragraph 2(b) of the Local Government Act, all elements within a hydroelectric power station must be considered as one entity, in which the roles and functions of each element are integral and inseparable. I

Accordingly, this court interprets it to be a machinery under the provisions of the law.

[60] With respect, we are unable to accept the suggestion advanced by learned counsel for the appellant that this court should adopt the dictionary and ordinary meanings of the word 'machinery' which envisages 'devices or contrivances that possess mechanical functions'. Therefore, other structures such as the diversion tunnel, which operate as a conduit for the passage of water, the tunnel liners and the closure of dam outlet, all of which are integrated with dam cannot be defined as 'machinery'.

[61] Dictionary meaning can be helpful in interpreting the meaning of the statutory language. However, if a statute deals with a technical or specialised subject (eg hydroelectric, telecommunications, tax etc), the words in the stature may have meaning that differ from their ordinary usage.

[62] In *Dy Chief Controller of Imports and Exports New Delhi v KT Kosalram and others* [1970] (3) SCC 82, the Supreme Court of India observed thus:

> In our opinion dictionary meanings, however helpful in understanding the general sense of the words cannot control where the scheme of the statute or the instrument considered as a whole clearly conveys a somewhat different shade of meaning. It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instrument upon the basis of these definitions. What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject matter, the purpose of the intention of the author and the effect of giving to them one or other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context.

[63] In *Cabell v Markham* [1945] 148 F 2nd 737, Justice Learned Hand stated at p 739:

> Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing; be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.

[64] In the present appeal, the contextual approach calls for an analysis from a functional standpoint of the apparatus, plant or machinery used in the 'making' of the article or product which in this case is electricity.

[65] We now turn to consider the functions of the five elements respectively.

The High Court in *Tapah* had explained extensively the principal features of a hydroelectric power station at para [16] of the judgment as follows: A

Empangan — dibina melintasi sungai atau lembah untuk menyekat aliran air bagi mewujudkan sebuah takungan air di bahagian hulu. Tekanan graviti dalam takungan dan kedudukannya di tempat tinggi mewujudkan tenaga keupayaan di dalam air yang ditakung. B

Alur masuk — dibina di dalam sebuah empangan atau sungai untuk membawamasuk air ke dalam terowong. Air yang masuk melalui alur masuk mengalirkan tenaga keupayaan dan tenaga kinetik. Elemen ini mempunyai penapis, pengaut sampah dan pintu-pintu air bagi menapis, mengawal, melaraskan dan mengasingkan aliran air yang memasuki terowong air. C

Terowong air — dibina sebagai satu sistem saluran yang digunakan untuk mengalirkan air dari alur masuk kepada terowong air tekanan tinggi. Terowong air biasanya agak mendatar dan bertekanan rendah. Sebahagian besarnya adalah berdindingkan batu-batan semula jadi dan bahagian lain pula berdindingkan konkrit berbentuk ladam kuda yang digunakan untuk mengalirkan air yang mempunyai tenaga keupayaan dan tenaga kinetik ke terowong air tekanan tinggi. Di hujung terowong air terdapat perangkapperangkap untuk memerangkap, mengasingkan dan mengalir keluar mendapan tanah, pasir atau batuan bagi mengelak kerosakan kepada elemen-elemen lain. D E

'Surge shaft/surge tank' — adalah bukaan berbentuk bulat di hiliran terowong air yang dibina secara menegak dari terowong air ke arah permukaan bumi untuk menyerap dan melepaskan tekanan mendadak yang meningkat secara tiba- tiba di dalam terowong air serta membolehkan pemberian bekalan air dengan pantas ketika penurunan tekanan sementara di dalam terowong air. F

Terowong air tekanan tinggi — adalah terowong keluli berbentuk bulat yang disaluti konkrit yang dibina secara curam dan berfungsi sebagai saluran untuk meningkatkan tenaga kinetik air yang mengalir melalui terowong air dan seterusnya mengalirkan air bertekanan tinggi dari empangan ke arah turbin. Bahagian permulaan setiap terowong air tekanan tinggi ada 'upper valve chamber' yang mempunyai 'guard valve/isolation valve' untuk menghentikan aliran air di dalam terowong bagi tujuan penyelenggaraan atau keselamatan. Terowong juga dilengkapi dengan 'over velocity valve' bagi mengesan had laju aliran air yang tidak normal dan seterusnya menutup aliran air secara automatik untuk menjaga keselamatan. Kedua-dua injap menggunakan tekanan air di dalam terowong bagi mengimbangi tekanan dan mencegah kesan 'water hammer' yang boleh memusnahkan semua elemen di dalam jana kuasa elektrik hidro. G H

Turbin — adalah elemen yang digerakkan oleh air tekanan tinggi yang menukar tenaga keupayaan dan kinetik air kepada tenaga mekanikal. Turbin disambung kepada generator melalui sebatang aci atau 'shaft'. I

Generator — setiap turbin disambungkan melalui sebatang aci kepada generator yang mana putaran mekanikal di dalamnya menukarkan tenaga mekanikal kepada tenaga elektrik.

Terowong pembuangan air — digunakan untuk mengalir keluar air tekanan rendah

daripada turbin untuk dilepaskan semula ke dalam sungai ataupun tasik. (Emphasis added.)

[66] The High Court in *Tapah*, relying on the 'functional test', decided that all elements in a hydroelectric power station constitute a single unit of 'machinery' required for the process of generating electricity. Each element, although physically separated, is important and interconnected to each other, none of the elements in the hydroelectric power station can function without the other.

[67] We accepted the MacReal report where it enumerated the working mechanism of the hydroelectric power station at para 7.0 as follows:

> In case of overflow during monsoon seasons there is a spillway that is ungated/free flow, with a maximum capacity of 7,000 cubic metres per second. Water flows through four penstocks into four turbines turning four air-cooled electric-generators rated at 100 megawatt each.
>
> The main component of the hydro power statement consists of a main embankment (dam), a saddle embankment (dam), pressure tunnels, turbines, generators, transformers and a spillway.
>
> The process of hydro power station starts from the main dam water pressure, channel into the tunnels (water cleaned from rubbish) whilst pushing the water into the surge shaft/surge tank. The water from the surge shaft or surge tank will then increase immediate water pressure which will then push the turbines.

[68] Upon the analysis and discussion of the functions of the various components of the hydroelectric power station, and upon consideration of the 'Functional Test' which is to regard all the features of the production process, whether moveable or immovable, as an integral whole and not to treat them on a piecemeal basis of assessment, we concluded that the functions and roles of each and every of the five elements are important and interconnected, none of them can function without the presence of the other. Thus, all of them are to be considered as a single unit of machinery for the production of electricity by fulfilling the respondent's (trader) operations of production of electricity. Inevitably, such single unit of machinery falls under the definition of 'machinery' under s 2(b) of the LGA, and hence it is 'article production machinery' which enjoys the exemption for computation of annual value of the property.

[69] In the course of arguments before us, both parties placed reliance on *Majlis Perbandaran Seberang Perai* with the aim of persuading the court to accept their contentions. Therefore, it is important for this court to examine the case in detail. In this case, the appellant on 11 November 1995 issued a New Valuation List on a revaluation of the respondent's power station known

as Stesen Janaletrik Seberang Perai ('SJSP') for the period effective from 1 January 1996. On 3 October 1996 the appellant rejected the respondent's objection at the hearing before its Rating Appeal Committee in respect of the appellant's valuation, taking into consideration, inter alia, and the enhanced value of the machinery used in the generation of electricity. The respondent contended that such machinery ought to be exempted from valuation and consequently, rates, pursuant to the exemption provision in s 2 of the LGA. One of the questions of law posed to be decided by the Federal Court in this case is that:

> whether the machinery referred to in the proviso at (b) to the definition of 'annual value' in s 2 of the Local Government Act 1976 (Act 171) refers to machinery that is not integrated with the 'land' and/or 'building' as defined in s 2 of the Local Government Act 1976 (Act 171);

[70] The Federal Court affirmed the High Court's decision and answered the above question of law in the affirmative:

> From the finding of the learned judge we can conclude *that the machinery referred to in proviso (b) refers to 'article production machinery' that are not integrated with the 'land' and/or 'building'*. The intention of the legislature in proviso (b) is to apply to all machinery in the production of articles or goods just like the function of SJPJ, that is, to produce electricity for sale to the consumers, large and small.
>
> We were advised that proviso (b) was applied in the valuation of the holding in respect of manufacturing plants and factories within the local authority area of the appellant and we see no reason why it should not be applicable to the respondent in this case. Rating has to be fair and equitable and the burden of rates should not be heavier on one party than on another. (see the comparison at pp. 449/450 of the Appeal Record). *The respondent submitted that the power station are actually not integrated i., the machinery with the land and buildings. In fact the machinery in a power station is removeable just like any other machinery of the manufacturing plant or factories.* (See p 578/579 of the Appeal Record). *There is no evidence shown to the contrary by the appellant.* (Emphasis added.)

[71] The Federal Court then proceeded to deal with the next question which is 'Question (c)' as follow:

> whether the generating plant and machinery present in a power station are structures within the definition of 'building' in s 2 of the Local Government Act 1976 (Act 171) and accordingly, are to be taken into account in determining the annual value of the said power station.

The Federal Court held that:

> In view of our answer to Question (a) that electricity is an article within the context of the said proviso (b), the question of the generating plant and machinery present in a power station are 'structures' within the definition of 'building' in s 2 of the

A LGA and are to be taken into account in determining the annual value of SJSP does not arise and it is not relevant for our consideration. The key issue here is that any machinery used for all or any of the purposes enumerated in items (i), (ii) and (iii) relating to any article (which we say includes electricity), the presence of such machinery which relates to 'article production machinery', the enhanced value of
B the holding from *the presence of such 'article production machinery' which may include generating plant and machinery shall not be taken into account in estimating the annual value of the holding of the respondent.*

In the circumstances, the matter of us answering Question (c) does not arise. This is in line with the appeal to this court in respect of such part of the judgment of the
C High Court as set out in the early part of this judgment wherein Question (c) is not in respect of part of such judgment appealed from. (Emphasis added.)

D **[72]** It can be discerned from *Majlis Perbandaran Seberang Perai* that 'article production machinery' in the definition of 'annual value' under s 2 of the LGA shall be the one which is not integrated with 'land' and/or 'building', as well as the fact that the machinery in this case is removable. However, it is unclear from the judgments of both the High Court and Federal Court in this case in respect of the type of machinery in issue. Nevertheless, the respondent in the
E present appeal submitted that the 'machinery' in this case is 'a thermal power station operated entirely by steam power to operate the turbines to generate electricity'. And the High Court's decision in this case seemed to be in line with the learned counsel for the respondent's submission when it was stated at para 25:

F The cooling water and the boiler feed pumps are no doubt pieces of machinery. But their purpose is to pump cooling water and in the case of the latter, condensate in the de- areator storage tank into the boiler drum'.

G **[73]** This further confirmed the suggestion by learned counsel for the respondent that the machinery in *Majlis Perbandaran Seberang Perai* and the one in the present appeal are different, and therefore the case in *Majlis Perbandaran Seberang Perai* is distinguishable.

H **[74]** We are of the opinion that *Majlis Perbandaran Seberang Perai* is not the authority for the proposition that machinery which is 'building' under s 2 of the LGA is not 'article production machinery' under s 2(b) of the same. Clearly, the Federal Court did not decide on such issue.

I **[75]** An important point to note is that the Federal Court in *Majlis Perbandaran Seberang Perai* decided that 'article production machinery' under s 2(b) of the LGA shall not be integrated with the land. The relevant part of the judgments in the High Court which was relied on by the Federal Court to reach such a finding is reproduced hereunder:

20. One would note firstly that nothing in the proviso (b) to the definition of 'annual value' suggests directly that any machinery could be a 'building'. Even so, the definition of 'building' lists items that are *in the nature of structure, support or foundation that are essentially immoveable*, and consistent with the notion of structure, support or foundation that are either provided by a landlord to a tenant, or, even if put up by a tenant, is generally expected to be left behind by a tenant upon leaving.

21. As mentioned in paragraph 8 above, *the exemption only of 'article production machinery' and extension of the meaning of such machinery to steam engines, boilers or other motive power belonging to such machinery to be excluded from the computation of annual value, leads me to the conclusion that all other machinery are intended to be included in the meaning of land and buildings where they are attached to such land and buildings*. The term 'other motive power' is wide enough to encompass other motive power relying on fuels, electricity, heat, or other sources of energy such as steam, wind, and wave motion or flowing water. A steam driven turbine is clearly as much a steam engine as the old steam driven piston engine on say a steam engine locomotive. Thus, if electricity is an article, then steam engines, boilers or other motive power belonging to the direct machinery for the production of electricity are also excluded. Thus, the alternators that produce electricity, and the turbines or steam engines, boilers or other motive power to the alternators are exempted from the computation of annual value for the purpose of rates.

22. But the annual value of machinery and all other things so attached to the land or building other than 'article production machinery' and steam engines, boilers or other motive power belonging to the direct machinery for the production of electricity are rateable. This would include the annual value of all administration, guardhouse, recreational and other buildings, transmission facilities, fuel pipelines, tanks etc. It would also include all land, which term includes all things attached to the earth or permanently fastened to anything attached to the earth and not otherwise excluded.

23. The conclusion must be that the annual value of the power generation units that directly produce the product 'electricity', including steam engines, boilers and other motive power belonging to the power generation units are not to be included in the computation of annual value for the levy of rates.

24. For clarity, the annual value of the holding in this case would comprise a) the value of the land, and b) buildings (if any) thereon, which term i) includes any house, hut, shed or roofed enclosure, whether used for the purpose of human habitation or otherwise, and also any wall, fence, platform, underground tank, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty. Landing-stage, swimming pool, bridge, railway lines, transmission lines, cables, redifiission lines, overhead or underground pipelines, or any other structure, support or foundation; and ii) excludes machinery for the production of electricity, and the steam engines, boilers or other motive power belonging to such machinery. (Emphasis added.)]

[76] The High Court in *Majlis Perbandaran Seberang Perai* merely adopted 'land' and 'building' as factors to differentiate between 'article production

machinery' and other machinery. If such machinery does not fall under 'article production machinery', it must then fall under 'land' and/or 'building'. This itself implies that the High Court in *Majlis Perbandaran Seberang Perai* to a certain extent agrees that 'article production machinery' could be the one that is in the nature of structure, support or foundation that are essentially immoveable. Nothing in s 2(b) of the LGA *directly* suggests so. Therefore, it is upon this basis that the Federal Court decided that 'article production machinery' is the one that is not integrated with the 'land' and/or 'building'. The Federal Court did not in any way reached its decision on the reasoning that machinery that integrated with the 'land' and/or 'building' and directly produces article cannot be considered as 'article production machinery' for exemption for computation of annual value of the holding.

[77] In arguing their case, parties made a reference to a plethora of cases. We do not propose to deal with all of the cases cited to us. In our opinion, they are all irrelevant and inapplicable since the legislations considered and the facts of those cases are distinguishable. The same legal issue has been correctly and authoritatively decided by this court in *Majlis Perbandaran Seberang Perai*.

CONCLUSION

[78] We do not find any error in the decision of the High Court in its construction of the definition of 'machinery' in the privo (b) of the definition of 'annual value' under s 2 of the LGA.

[79] For all the above reasons, our answer to question 1 is in the affirmative, namely, that the structures or elements in dispute before us should be construed as 'machinery' under s 2(b) of the LGA. It follows, therefore, that question 2 should be answered in the affirmative. Consequently, these appeals are dismissed and the cross appeal is allowed with costs. Costs of RM60,000 for both appeals subject to *allocator*. The excess rate of RM34,470,200 is to be refunded in the following manner:

(a) the first payment of RM15m be paid within the period of 30 days from the date of the decision of this court; and

(b) the balance to be paid within six months from the first payment.

Order accordingly.

Reported by Ashok Kumar